1: Swanton E-5 (1911-12)1928 NN11 Creek NN11

town.' The like proof was contained in an observation of the Little Prince during the negotiation. In argument, an old treaty was referred to, which had been concluded between the Creeks and the state of Georgia. Its authenticity was denied, on the ground that 'no Coweta chief had signed it.' Coweta is on both sides of the Chattahoochie; contains McIntosh, the Little Prince, Tome Tuskumuggee; and extends from Broken Arrow to the Cherokee boundary. It is worthy of remark, that the treaty of 1821, concluded at the Indian Springs, is signed by but two chiefs on the Alabama side of the nation. The fact is, that McIntosh maintains the right of the Coweta town alone to dispose of the whole country. It would seem that the upper towns conceded this authority, and dreaded its exercise; for the utmost consternation was discoverable whenever it was known that the commission (the Commissioners) and the Coweta chiefs had had an interview.[55]

A much longer brief for the supremacy of Coweta is given in the volume from which the above is quoted. This was compiled by Joseph Vallence Bevan for the State of Georgia,[56] and is in consequence an ex parte document like the one quoted. On the other hand, the speaker for the Tukabahchee chief, the famous Hoboi-hil yahola, who represented the sentiments of most of the Upper Creeks, delivered a "talk" to the United States commissioners at Indian Springs, Friday, February 11, 1825, opposing some of the claims of Coweta. He said in part:

"We met you at Broken Arrow, and then told you we had no land to sell; I then heard of no claims against the nation, nor have I since. We have met you here at a very short notice, and do not think that the chiefs who are here have any authority to treat. General McIntosh knows that we are bound by our laws, and that what is not done in the public square, in general council, is not binding on the nation. I am, therefore, under the necessity of repeating the same answer as given at Broken Arrow, that we have no land to sell. I know that there are but few from the upper towns here, and many are absent from the lower towns.

"General McIntosh knows that no part of the land can be sold without a full council, and without the consent of all the nation; and, if a part of the nation choose to leave the country, they can not sell the land they have, but it belongs to the nation. From what you told us yesterday, I am induced to believe that it may be best for us to remove, but we must have time to think of it; and, should the chiefs who are here sell the land now, it might create dissentions and ill blood among the Indians. I have received a message from my head chief, the Big Warrior, directing me to listen to what the com-

[55] Am. State Papers, Ind. Aff., vol. II, p. 573. [56] Ibid., p. 728.

1: Swanton - E-5 (1911-12)1928 NN11 Creek NN11

missioners have to say; to meet them friendly, and part in the same way, but not to sell the land." [57]

It is noteworthy that Hoboi-hil yahola does not deny the headship of Coweta; he merely denies that Coweta had the right to dispose of Creek territory, holding that such a right was vested solely in the full council of the confederacy.

But if we explore still farther into the past, by means of native traditions, we find priority claimed by Kasihta, and in fact I believe Kasihta to have been originally the leading town. This would receive abundant confirmation if, as I have supposed, Kasihta was the ancient Cofitachequi. There is some reason to think that the foundation of the confederacy had been laid in De Soto's time, the principal parties to the alliance being Cofitachequi (Kasihta), Coosa, and probably Coweta, though this last is not mentioned in the De Soto narratives under a recognizable name. The importance which we find later attached to Otciapofa was probably inherited in the first instance from Coosa and later strengthened by the dictatorship of McGillivray.

One of our sources affirms an ancient headship of Atasi among the Tallapoosa towns. It says:

"The nation of Talapouches live under a republican form of government. There were formerly princes over it whose authority was absolute. In many places are to be seen mounds of earth more than half a league in length which they conducted from one mountain to another. The grand chief lived in the village of the Atachés and bore the same name. After the death of the last of these princes there was no longer a particular chief in this village, but the war chief commands. They say that the [last grand] chief went to the sky to see his relatives, and that he has assured them that he will return." [58]

The only corroboration this receives, and that only by inference, is from the wooden figure of a man which Adair states the people of this town had set up in their square.

Leadership in the confederacy was evidently due for the most part to size, power, and prestige, and its workings were probably based on a body of precedent. [59]

Unfortunately no satisfactory study of the organization of the confederate Creek council has come down to us, and we must form an estimate of it by piecing together information from several sources. The most specific statement is furnished by Bossu, who says:

"These peoples (the Creeks) hold a general assembly annually in the principal village or the chief place of the nation; there is a great

[57] Am. State Papers, Ind. Aff., vol. II, p. 552.

[58] French Ms. of 1735.

[59] Gallatin, on the authority of Mr. Mitchell and Colonel Hambly, gives "Thlococtcho" as the name of "the general seat of government" of the Creeks. This is probably intended for Tukatcka, the residence of the "Little Prince," at one time head chief of the nation. It was a branch of Coweta. (See Trans. Am. Antiq. Soc., vol. II, p. 112.)

1: Swanton E-5 (1911-12)1928 NN11 Creek NN11

The yard immediately about each house or group of houses of course went with it; the square ground, chunky yard, and hot house were the property of the community. Gardens, as Bartram has stated, could be cleared by anyone anywhere within the limits of the town land.[10] And Eakins expresses their attitude toward the private ownership of land by the quotation, "It is for me, for thee, and for all." He adds, however, that improvements were sometimes sold.[11] This applied to the Creeks in their western home about the middle of the nineteenth century.

Regarding the town lands Stiggins says:

"The inhabited parts of the nation are laid out into town districts designated from some creek, ridge, or point to some other noted point which boundary is organized into certain town corporated precincts under the moral guardianship of their *mic cul ga*." [12] The inhabitants of each town claimed an exclusive right to hunt in the territory immediately about it, and according to Stiggins men of one town approached another "with seeming diffidence, though the towns may be contiguously situated." [13] At times an agreement was entered into by the members of a town to refrain from hunting in a certain territory for a definite period. A kind of taboo similar to the device common among the Polynesians was laid upon it and it was called "ikána tcaka," "the sacred or consecrated land." At the expiration of the time fixed upon the people entered this tract and hunted there together. Bears were the chief animals which they expected to find.

The management of the large town fields is instructive. Bartram says of them:

"Every town or community assigns a piece of land as near as may be to the town, for the sake of convenience. This is called the *town plantation*, where every family or citizen has his parcel or share, according to desire or convenience, or the largeness of his family. The shares are bounded by a strip of grass ground, poles set up, or any other natural or artificial boundary, so that the whole plantation is a collection of lots joining each other, comprised in one enclosure or general boundary." [14]

These fields were planted and cultivated by the town working together, all attending to the several plots in turn. They harvested at the same time, but then each family harvested from its own plot. A part of the produce of each lot was placed in a public granary under the charge of the chief.

---

[10] Bartram in Trans. Am. Eth. Soc., vol. III, p. 37.
[11] Eakins in Schoolcraft, Ind. Tribes, vol. I, p. 277.
[12] Stiggins, Ms. Hist. Narr., p. 15.
[13] Ibid., p. 19.
[14] Bartram, op. cit., p. 39.

1: Swanton E-5 (1911-12)1928 NN11 Creek NN11

From what Adair tells us[14a] it would seem that the stones used in playing the chunkey game were town property.

The house, and probably the necessary household furniture, belonged to the wife, the tools made and used by the husband to him, and thus they were vested in different clan groups and some of them probably went to entirely different persons at the death of the owners. In early times such a large part of a man's personal property was buried with his corpse that not much was left for heirs to quarrel over. Bartram says that the first selection from whatever was left was made by the head wife of the deceased, the remainder being divided between his other wives and his children.[15] This may have been true in certain special cases but there is reason to doubt that it represented a custom common in earlier times. Says Eakins:

"The descent of property is fixed. It is willed as the parents please. But if no will has been made, the property reverts to the children. But in case of a marriage with a widow, with children, her property reverts to her children by her first husband. The eldest son is entitled only to an equal portion with the rest. A written will is binding. A verbal will, established by two responsible persons, is valid also. If there has been no other disposition made of the medal, it goes to the eldest son. In former times, all relics were taken possession of by the deceased sister's eldest son. But now they are the subject of legacy as other property."[16]

This statement dates, of course, from a comparatively late period in the history of the Creek Indians, about the year 1850. The same authority states just above that anciently all property descended in the female line—indeed, he implies as much in the quotation just given—and there is every reason to believe that this is correct. It is confirmed by Gregg.[17]

As to the lands of the confederacy outside of these town areas we may probably rely upon the following statement, also by Bartram:

"Every individual inhabitant has an equal right to the soil and to hunt and range over this region, except within the jurisdiction of each town or village, which I believe seldom extends beyond its habitations and planting grounds. Perhaps the *Uches* are to be excepted. They claim an exclusive property, by right of a contract; but though they sometimes put the Creeks in mind of this privilege, when their hunters make too free with their hunting grounds, yet the dispute seldom goes further, as the Confederacy are cautious of offending the Uches, and yield to their common interest and safety."[18]

[14a] See p. 455.
[15] Bartram, Travels, p. 514.
[16] Schoolcraft, Ind. Tribes, vol. I, p. 283.
[17] Gregg, Commerce of the Prairies, in Thwaites, Early Western Travels, vol. 20, p. 317.
[18] Bartram in Trans. Am. Eth. Soc., vol. III, p. 22.

1: Swanton E-5 (1911-12)1928 NNIl Creek NNIl

The Yuchi probably claimed an exclusive right to hunt in their ancient territories on the Savannah and Ogechee.

Spoils taken in war were the property of the captor. Rights to land on the part of tribes and towns seem to have been based on original occupancy, hunting, and conquest in wars with other tribes.[19] It is probable that if we could investigate the Creek confederacy as it existed in the seventeenth and eighteenth centuries we should find that, in spite of a freedom to hunt broadly exercised, certain towns and clans claimed prior rights over parts of the common territory outside of their contiguous town limits, so easily does the idea of ownership become associated with that of use.[20] Coweta in particular seems to have put forth extensive claims to ownership of territory in the eastern part of the Creek area, and early in the nineteenth century even professed a right to dispose of the lands of the entire nation. This was, however, a political move fathered by the State of Georgia and that half-breed element which was acting in its interest.

In general we may say of the ancient Creeks that use and ownership among them were pretty closely united while the clan system and accompanying feeling of solidarity and sense of the duty of hospitality diffused prosperity to such an extent that well being was pretty widely extended and contrasts between wealth and poverty comparatively slight.

Finally I can not refrain from quoting the following passage from Hawkins, which shows clearly the economic bases of the difficulties between the whites and the larger tribes of Indians in the Southeast:

"Notwithstanding, I rely for the present on the assurance I have received [from the Indians], I must inform you that the game has become scarce; the wants of the Indians are increasing, the men too proud to labour; the distemper has destroyed their horses; the presents heretofore given by Great Britain, in quantities sufficient to cloathe all the idlers, has ceased; those given by Spain are mere baubles. The men, bred in habits proudly indolent and insolent, accustomed to be courted, and to think that they did a favour by receiving, where naked, cloathes and comforts from the British agents, will reluctantly and with difficulty, be humbled to the level of rational life." [21]

Crime and Punishment

The word haksi was used by Chickasaw of Adair's time "to convey the idea of a person's being a criminal in any thing whatsoever," and "such unfortunate persons as are mad, deaf, dumb, or blind, are called by no other name." [22] The original meaning of this word is

[19] Schoolcraft, Ind. Tribes, vol. I, p. 282.

[20] Eakins denies, however, that families had exclusive rights to any hunting grounds. This was after the removal west.

[21] Hawkins, Letters, in Ga. Hist. Soc. Colls., vol. IX, p. 240; cf. also p. 269.

[22] Adair, Hist. Am. Inds., p. 157, footnote.